

LS 5-2026
16 Sept.

OGC HAS REVIEWED.

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04c/B 7164

14 September 1955

MEMORANDUM FOR: Chief, EE

SUBJECT :

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1. A decision recently handed down by the United States Court of Claims will be of interest to In Campbell v. U.S. (132 F. Supp. 225) the Court of Claims ruled favorably on an action by a retired Army officer to recover retirement pay which had been suspended while he was employed by the United States Government in a civilian position. Of particular interest is the Court's ruling on the Army's reversal of its original finding that the plaintiff's disability was incurred through an explosion of an instrumentality of war.

2. In the Campbell case the plaintiff was retired for disability in 1946 upon a finding by the Army Retiring Board, approved by the Secretary of War acting through the Adjutant General, that plaintiff was permanently incapacitated for active service by reason of deafness and that the deafness resulted from an instrumentality of war in line of duty. Subsequently, the Veterans' Administration notified plaintiff that his disability did not result from an explosion of an instrumentality of war in line of duty and since his compensation was in excess of \$3,000 per annum from Government employment, the provisions of section 212 of the Economy Act (5 U.S.C. 59a) applied to the plaintiff. The Veterans' Administration cancelled plaintiff's retirement pay and he refunded the retired pay which he had received.

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3. The key part of the decision by the Court of Claims insofar as it may be applicable to is the following:

"The position of the defendant cannot be sustained. The Adjutant General, acting for the Secretary of War, approved the finding of the Board that plaintiff's disability resulted from an explosion. The Board was authorized to make this finding. The determination of the Army Retiring Board, approved by the Adjutant General, acting for the Secretary of War, that plaintiff was physically incapacitated for active service resulting from the explosion of an instrumentality of war in line of duty is final and can be re-opened only upon a showing of mistake of law, manifest error, fraud, mathematical miscalculation and subsequently newly discovered evidence of sufficient probative value to raise a reasonable doubt as to prior findings. The findings of a Retiring Board, once approved by the Secretary of War, cannot be changed because of a mere revaluation of the existing evidence. The orders of the Secretary of War are final when he acts in a quasi-judicial capacity. If the rule were otherwise, deserving officers would find their retired status subject to periodic re-examination upon changes in Executive or Army administrations, or upon decreases in appropriations."

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4. This Office cannot tell from information available to it whether or not the War Department's reversal of the original finding that [redacted] disability was combat incurred was made in such a manner as to be voided by the decision in Campbell v. U.S. However, from the records available to us it appears that this decision might be binding in [redacted] case. 25X1

5. We understand that [redacted] retirement pay has been reinstated and that he has been repaid retirement benefits for the period since they were suspended. Thus it appears that the Army has accepted the applicability of the recent Comptroller General's opinion (B-128146) to [redacted] and that there will be no question of his eligibility to receive retirement pay while he holds his present relationship to this Agency. Under these circumstances the opinion in Campbell v. U.S. is of no immediate interest to [redacted] We also call your attention to the fact that a recent amendment to the Economy Act of 1932 (P.L. 239, 84th Cong.) liberalizes dual compensation restrictions on officers retired for disability. Under the amendment [redacted] may receive dual compensation up to a total of \$10,000 as an officer retired for disability regardless of whether or not the disability resulted from an injury incurred in combat or from an instrumentality of war. However, the Campbell opinion will be very important to [redacted] in the event that he ever wishes to become an employee of this Agency or any other department or agency of the United States Government. If it can be shown that the Campbell opinion is binding in regard to Mr. [redacted] case he will continue to be considered an officer retired for disability incurred in combat and thus be exempted from the \$10,000 limitation in the Economy Act of 1932, as amended, and other dual compensation restrictions. 25X1

6. It is suggested that you pass this information on to [redacted] for possible future use in the event of any questions as to his eligibility for exemption from dual compensation limitations. You should also caution him that the decision in Campbell v. U.S. may be reversed upon appeal. There was a dissenting opinion and the dissenting judge interpreted the facts in such a way as to find against the plaintiff. The Appeal Court might agree with the dissenting judge on the Court of Claims and reverse the decision in the Campbell case. 25X1

7. If your division or [redacted] have any questions regarding his position in light of this decision and the recent amendment of the Economy Act of 1932, we shall be glad to offer assistance upon the receipt of the necessary facts. 25X1

[redacted]
Office of General Counsel

OGC:JDM:ss

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